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 16 SAN JOSE DIVISION

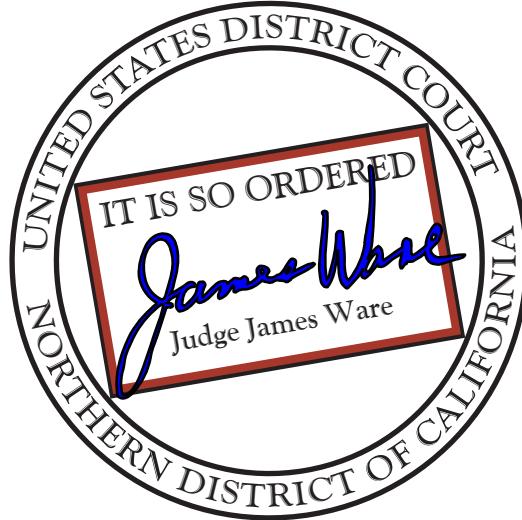
17 JOSE GALVAN-LUNA, ) No. CV 05-05218 JW  
 18 v. ) CR 03-20029 JW  
 19 UNITED STATES OF AMERICA, ) STIPULATION TO DISMISS JOSE  
 20 Petitioner, ) GALVAN-LUNA'S HABEAS CORPUS  
 21 Respondent. ) PETITION AND [PROPOSED] ORDER  
 22 \_\_\_\_\_) *James Ware*

23 On October 7, 2003, the petitioner Jose Galvan-Luna was sentenced to 70 months  
 24 imprisonment for one count of illegal reentry after deportation in violation of 8 U.S.C. § 1326.

25 On December 15, 2005, Galvan-Luna filed a Motion to Vacate, Set Aside or Correct  
 26 Sentence by a Person in Federal Custody, pursuant to 28 U.S.C. § 2255 (Civil Action 05-05218  
 27 JW), alleging that his trial counsel was ineffective in failing to file a notice of appeal despite  
 28 being specifically directed to do so. The petitioner also requested appointment of counsel.

On March 22, 2006, the Court issued an Order directing the government to file a  
 response. The government filed its response on May 1, 2006.

By Order of July 20, 2007, the Court granted Galvan-Luna's motion for appointment of



counsel. The Court also granted the government's request for an evidentiary hearing to determine whether counsel disregarded the petitioner's instructions to file a notice of appeal.

Jerry Fong, Esq., was appointed as Jose Galvan-Luna's counsel for purposes of handling the habeas corpus petition.

Mr. Fong has recently communicated with the petitioner Jose Galvan-Luna, who has finished serving his sentence of imprisonment and is no longer in custody. Mr. Fong has advised the government that his client is no longer interested in pursuing the instant habeas corpus petition and has asked that it be dismissed.

Accordingly the parties hereby stipulate that the petitioner Jose Galvan-Luna's Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody, pursuant to 28 U.S.C. § 2255 (Civil Action 05-05218 JW), which was filed on December 15, 2005, should be dismissed. The parties jointly request that the Court enter an order dismissing the same.

It is so stipulated.

Respectfully submitted,

Dated: June 29, 2009

JOSEPH P. RUSSONIELLO  
UNITED STATES ATTORNEY

/S/

Dated: June 29, 2009

JERRY FONG, ESQ.  
Attorney for Jose Galvan-Luna

## ORDER

Based upon the stipulation of the parties and for good cause shown, it is hereby ORDERED that Jose Galvan-Luna's Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody, pursuant to 28 U.S.C. § 2255 (Civil Action 05-05218 JW), which was filed on December 15, 2005, is hereby DISMISSED.

The Clerk shall close this file.

Dated: July 1, 2009

JAMES WARE  
United States District Judge